Supreme Court, U.S.
FILED
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(2)

NO. 90-1214

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1990

DEEN THOMAS WILLIAMSON,
Petitioner,

V.

ABILENE INDEPENDENT SCHOOL DISTRICT,
TEXAS STATE TEACHERS ASSOCIATION,
WAYNE BLEVINS, GAYLE LOMAX,
DON SIMMONS, TOMMIE ALLEN,
VICKIE HARPER, PAT DUDLEY,
ELMON HIGGS, SHIRLEY BABER,
BOB JOY, GENE KINSER,
BYRON CRAIG (POSTHUMOUS),
CRAIG WILLIAMS
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS

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Pro Se Petitioner

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RESPONDENTS RESPONSE TO PETITIONER'S "QUESTIONS PRESENTED"

This appeal arises out of the dismissal of a petition filed pro se by petitioner, Deen Thomas Williamson, against Respondents. The trial court sustained Rule 12 motions filed by all defendants on the basis that plaintiff's petition failed to state a claim upon which relief could be granted. Petitioner appealed pro se to the Fifth Circuit Court of Appeals with the sole point of error being:

> The district court erred by failing to grant a judgment in favor of the plaintiff.

The fifth circuit treated the point of error as being a complaint that the district court erred in granting defendants' motions to dismiss for failure to state a claim upon which relief could be granted. Finding no error, the court affirmed the district court judgment.

Petitioner requests this court to grant certiorari upon the basis that there is a conflict between the decision of the fifth circuit herein and the decisions of other circuit courts over the supreme court. Respondents would respectfully show the court that no such conflict, in fact, exists.

The perceived conflict alleged by Williamson is that the fifth circuit court failed to apply the standard set forth by other courts in determining the sufficiency of the pleadings of a pro se litigant in the face of a Rule 12(b)(6) motion to dismiss. Her claim is that the circuit court held that her pro se pleadings were not to be given liberal construction. This is not true. In its opinion the circuit court stated:

> P. 2--We accept all well-pleaded facts as true and construe them in the light most favorable to the plaintiff.
>
> P. 3--Because Williamson is a pro se litigant, we must liberally construe her complaint.

P. 3--We cannot uphold the district court's dismissal 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.'

Willimson cites no cases holding to the contrary.

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CITATIONS OF OPINIONS AND JUDGMENTS

The opinions and judgments delivered in the courts below are correctly set forth in Williamson's petition for writ of certiorari.

JURISDICTION

Respondents admit that this court has jurisdiction; however, they deny that certiorari is appropriate under Rule 10 of the Supreme Court Rules in that there is no conflict between the opinion of the fifth circuit court and the decisions of other United States Courts of Appeals on the same matter nor does the question presented constitute an important question of federal law which has not been decided.

STATEMENT OF FACT

Petitioner, Deen Williamson, was an untenured teacher working for the Abilene Independent School District under a one-year contract. The contract period was for the fall, 1986 and spring, 1987 school term. On December 18, 1986, school officials advised Williamson that she was being relieved as a regular class room teacher and assigned as a substitute teacher without any change in pay or benefits. At that time, she was also advised that the school district did not intend to renew her contract at the end of the school year. She was further advised of her right to appeal the termination (Appendix 18G to petitioner's brief). On December 19, 1986, Williamson delivered a letter to the personnel director of Abilene Independent School District accepting the reassignment and further tendering her resignation as of May 29, 1987, which was the end of her contract period (Appendix 16G to petitioner's brief). On July 4, 1987, Williamson requested a hearing before the school board to challenge the failure to renew her contract (Appendix 19G to petitioner's brief). The request for hearing was denied based upon a failure to make a timely request and the fact that Williamson had voluntarily resigned from her teaching duties (Appendix 20G to petitioner's brief).

Thereafter, this suit was filed by Williamson pro se alleging violations of 28 U.S.C. §1331; 42 U.S.C. §1971, §1973 and §1988; Civil Rights Act of 1957 and 1964; civil conspiracy; fraud; Federal Rules of Civil Procedure 8(C); United States Constitution; due processes related to procedural law; and the First, Ninth and Fourteenth Amendents to the Constitution of the United States. On appeal, Williamson also complained of possible manslaughter, RICO and Taft-Hartley Act violations.

All defendants filed motions to dimiss under Rule 12(b)(6) upon the grounds that plaintiff had failed to state any set facts in her petition which, if true, would give rise to jurisdiction in the federal district court. Such motions to dismiss were, in all things, granted.

Williamson, in her brief, complains at great length about the conduct of all parties, their attorneys and judges, but, at no point, does she ever refer to any allegations of fact in her pleadings which

would constitute a cause of action under any of the statutes or constitutional amendents alleged.

ARGUMENT AND AUTHORITIES

These respondents take no issue with any of the authorities cited by petitioner. Although Williamson complains at great length in her petition about her mistreatment, the petition simply fails to set forth any allegations of wrongdoing by any of the named defendants which would, if true, give a federal court jurisdiction to hear such complaints. Although she complains that the district court refused to permit her to to amend her pleadings, the record shows that, in fact, she never requested leave to amend her pleadings nor did she attempt to file any pleading with the court which stated any sort of cause of action within the jurisdiction of the United States District Court. Additionally, although the complaint is made that the district and circuit courts applied the law incorrectly, no allegations of fact are set forth in Williamson's brief which, if true, would give the court jurisdiction to grant the relief requested. Her complaint of error, therefore, is immaterial. Respondents would point out, however, that the correct standard in evaluating the petition was, in fact, utilized both by the district court and the circuit court of appeals.

The opinion of the district court held:

> When the court reviews a complaint to determine if it is sufficient to state a claim under any of the referenced federal laws or constitutional provisions, it is not sufficient even for a pro se plaintiff to allege violation of any such rights by simply stating conclusions to that effect. It is incumbent upon plaintiff to make 'specific allegations of fact indicating a deprivation of civil rights, rather than state simple conclusions' and failure to do so warrants dismissal for failure to state a claim.

The circuit court of appeals specifically set forth the standard in evaluating the pleadings as is alleged should have been done by appellant. The court stated:

> We review de novo motions to dismiss under Fed. R. Civ. Pro. 12 (b) (6). See, for example, Barrientos v. Reliance Standard Life Ins. Co., 1990 U.S. App. LEXIS 16321, *3 (5th Cir). We accept all well-pleaded facts as true and construe them in the light most favorable to the plaintiff. See, for example, Bell & Murphy & Associates, Inc. v. Interfirst Bank Gateway, 894 F.2d 750,752 n. 1 (5th Cir 1990). Because Williamson is a pro se litigant, we must liberally construe her complaint. See Haines v. Kerner, 404 U.S. 519, 520 (1972). We cannot uphold the district court's dismissal 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.' Conley v. Gibson, 355 U.S. 41, 45-46 (1957). See also Thomas v. Smith, 897 F.2d 154, 156 (5th Cir. 1989).

Williamson argues at great length in her brief herein and in the Court of Civil Appeals factual matters which she claims give rise to a cause of action. However, no such allegations of facts were set forth in her petition. When reviewing a dismissal for failure to state a claim for relief, the court must assume what is pled is true but cannot consider violations of laws not alleged nor whether plaintiff may be able to prove facts which are not alleged in the complaint. See Assoc. Gen. Contractors of California, Inc. v. California State Council of Carpenters, Cal. 1983, 103 S.Ct. 897; 459 U.S. 519; 74 L.Ed. 2d 723 (1983).

Even if the court were to consider the factual allegations set forth in Williamson's brief, same, even if true, would give rise to no cause of action within the jurisdiction of the federal courts. The case was correctly decided.

Respondents would further show the court that appellant's complaint concerns strictly the outcome of her litigation and would have no bearing on other suits nor would it constitute any sort of legal precedent affecting other litigation. The circuit court opinion, therefore, has no significance to anyone other than the parties to this litigation. In deciding whether to grant a writ of certiorari, the supreme court is ordinarily not concerned with achieving individual justice

in an individual case. See Layne & Bowler Corp. v. W. Well Works, Inc., 1923, 43 S.Ct. 422; 261 U.S. 387; 67 L.Ed. 712 (1923).

None of the points of error alleged by Williamson were asserted before the Fifth Circuit Court of Appeals. The supreme court will ordinarily not decide questions which had not been passed upon by the Court of Appeals. See U.S. v. Fleischman, App. D.C. Cir. 1950, 70 S.Ct. 739; 339 U.S. 349 (1950); 94 L.Ed. 906; Sonzinsky v. U.S., 7th Cir. 1937, 57 S.Ct. 554; 300 U.S. 506; 81 L.Ed. 772 (1937). They, therefore, should not now be raised for the first time before the supreme court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, these respondents pray that petitioner's application for writ of certiorari be, in all things, denied and that they have such other and further relief as they may show themselves justly entitled.

Respectfully Submitted,
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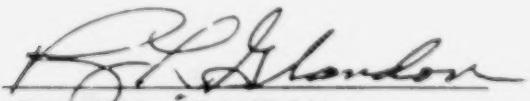
BY: 
ROGER L. GLANDON
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ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served upon the parties by mailing same by certified mail, return receipt requested, this the _____ day of February, 1991 to:

Deen Thomas Williamson
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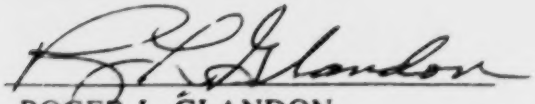

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